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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

-v.-

RICHARD CUNNIFFE,

Defendant.

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CONSENT PRELIMINARY ORDER OF  
FORFEITURE/MONEY JUDGMENT

15 Cr. 287 (LTS)

WHEREAS, on May 12, 2015, RICHARD CUNNIFFE (the “Defendant”) was charged in a six-count Information, 15 Cr. 287 (LTS) (the “Information”), with conspiracy to commit securities fraud and fraud in connection with a tender offer, in violation of Title 18, United States Code, Section 371 (Count One); conspiracy to commit wire fraud, in violation of Title 18, United States Code, Section 1349 (Count Two); securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff; Title 17, Code of Federal Regulations, Sections 240.10b5 and 240.10b5-2; and Title 18, United States Code, Section 2 (Counts Three through Five); and securities fraud in connection with a tender offer, in violation of Title 15, United States Code, Sections 78n(e) and 78ff (Count Six);

WHEREAS, the Information included a forfeiture allegation as to Counts One through Six of the Information seeking, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461, the forfeiture of any and all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offenses alleged in Counts One through Six of the Information;

WHEREAS, on or about May 14, 2016, the Defendant pled guilty before this Court, to Counts One through Six of the Information pursuant to an agreement with the Government, wherein the Defendant agreed to forfeit, pursuant to Title 18, United States Code, Section

981(a)(1)(C) and Title 28, United States Code, Section 2461, any property, real or personal, which constitutes or is derived from proceeds traceable to such offenses including; :

WHEREAS, the Government is seeking forfeiture of \$900,000 in United States currency, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461, representing the amount of proceeds traceable to the commission of the offenses alleged in Counts One through Six of the Information;

WHEREAS, the Defendant consents to the terms of this Consent Preliminary Order of Forfeiture/Money Judgment and its entry against him and furthermore to the entry of a money judgment in the amount of \$900,000.00 in United States currency, representing the amount of proceeds traceable to the commission of the offenses alleged in Counts One through Six of the Information; and

IT IS HEREBY STIPULATED AND AGREED, by and between the, United States of America, by its attorney Joon H. Kim, Acting United States Attorney, Assistant United States Attorney Brooke E. Cucinella, of counsel, and the Defendant, and his counsel, Kevin T. Kearon, Esq., and Alexander R. Klein, Esq., that:

1. As a result of the offenses charged in the Information, to which the Defendant pled guilty, a money judgment in the amount of \$ 900,000 (the "Money Judgment") in United States currency shall be entered against the Defendant, RICHARD CUNNIFFE.

2. Pursuant to Rule 32.2(b)(4) of the Federal Rules of Criminal Procedure, upon entry of this Consent Preliminary Order of Forfeiture/Money Judgment, this Consent Preliminary Order of Forfeiture/Money Judgment is final as to the Defendant, RICHARD CUNNIFFE, and shall be deemed part of the sentence of the Defendant, and shall be included in

the judgment of conviction therewith.

3. All payments on the outstanding Money Judgment shall be made by postal money order, bank or certified check, made payable, in this instance to the United States Marshals Service, and delivered by mail to the United States Attorney's Office, Southern District of New York, Attn: Money Laundering and Asset Forfeiture Unit, One St. Andrew's Plaza, New York, New York 10007 and shall indicate the Defendant's name and case number.

4. Upon execution of this Consent Preliminary Order of Forfeiture/Money Judgment, and pursuant to Title 21, United States Code, Section 853, the United States Marshals Service shall be authorized to deposit the payments on the Money Judgment in the Assets Forfeiture Fund, and the United States shall have clear title to such forfeited property.

5. The Court shall retain jurisdiction to enforce this Consent Preliminary Order of Forfeiture/Money Judgment, and to amend it as necessary, pursuant to Rule 32.2(e) of the Federal Rules of Criminal Procedure.

6. Pursuant to Rule 32.2(b)(3) of the Federal Rules of Criminal Procedure, upon entry of this Consent Preliminary Order of Forfeiture/Money Judgment, the United States Attorney's Office is authorized to conduct any discovery needed to identify, locate or dispose of forfeitable property, including depositions, interrogatories, requests for production of documents and the issuance of subpoenas, pursuant to Rule 45 of the Federal Rules of Civil Procedure.

7. The Clerk of the Court shall forward three certified copies of this Consent Preliminary Order of Forfeiture/Money Judgment to Assistant United States Attorney, Alexander J. Wilson, Chief, Money Laundering and Asset Forfeiture Unit, One St. Andrew's Plaza, New York, New York 10007.

8. The signature page of this Consent Preliminary Order of Forfeiture/Money Judgment may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

AGREED AND CONSENTED TO:

JOON H. KIM  
United States Attorney for the  
Southern District of New York

By: Brooke E. Cucinella  
BROOKE E. CUCINELLA  
Assistant United States Attorney  
One St. Andrew's Plaza  
New York, NY 10007  
Office: (212) 637-2477

11/6/2017  
DATE

RICHARD CUNNIFFE

By: Richard T. Cuniffe  
RICHARD CUNNIFFE

11/6/17  
DATE

By: ~~KEVIN T. KEARON, Esq.~~ Bruce A. Barker  
~~ALEXANDER R. KLEIN, Esq.~~  
Barket Marion Epstein and Kearon, LLP  
666 Old Country Road., 7th Floor  
Garden City, NY 11530

11/6/17  
DATE

SO ORDERED:

  
HONORABLE LAURA TAYLOR SWAIN  
UNITED STATES DISTRICT JUDGE

11/6/17  
DATE